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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/774,962	01/31/2001	Jim McCollum	826	6020

7590 06/18/2003

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EXAMINER

BOTTORFF, CHRISTOPHER

ART UNIT	PAPER NUMBER
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3618

DATE MAILED: 06/18/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/774,962

Applicant(s)

MCCOLLUM ET AL.

Examiner

Christopher Bottorff

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 March 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other:

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DETAILED ACTION

In view of the appeal brief filed on March 25, 2003, PROSECUTION IS HEREBY REOPENED pursuant to the examiner's authority discussed in MPEP § 1208.02. New grounds or rejection are set forth below.

To avoid abandonment of the application, appellant must exercise one of the following two options:

(1) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37 CFR 1.113 (if this Office action is final); or,

(2) request reinstatement of the appeal.

If reinstatement of the appeal is requested, such request must be accompanied by a supplemental appeal brief, but no new amendments, affidavits (37 CFR 1.130, 1.131 or 1.132) or other evidence are permitted. See 37 CFR 1.193(b)(2).

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 7 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 7 recites the limitation "said base member" in line 2. There is insufficient antecedent basis for this limitation in the claim.

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Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1 and 7 are rejected under 35 U.S.C. 102(b) as being anticipate by Fox US 3,934,895.

Fox discloses a wheeled, portable, collapsible athletic equipment carrier comprising a two wheeled cart and an athletic bag incorporating the cart. See Figure 1 and note wheels 24, bag 8, and collapsible handle 32. The bottom end of the athletic bag rests against a base member 12 of the cart such that a bag mounting platform is formed that serves as a base upon which a base of the bag is permanently attached. See column 1, line 65, through column 2, line 5.

Claims 1, 2, 5 and 7 are rejected under 35 U.S.C. 102(b) as being anticipated by Server Perez US 4,989,889.

Server Perez discloses a wheeled, portable, collapsible equipment carrier comprising a two wheeled cart and a bag 6 incorporating the cart. See Figures 1-4, and note the wheels mounted to frame member 9 and the collapsed configuration depicted in figure 2. A main frame 2, 5, and 9 has an anterior end opposite a posterior end and includes a hollow, tubular base member 9 forming a U-shape that serves as a base upon which the bag can be supported. An elongated, hollow, tubular handle 1 and 4

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formed of a U-shape is pivotally mounted at sleeve 3 to inside circumferential sidewalls 2 of the main frame at the anterior end. See Figures 1, 3, and 4. The bottom end of the athletic bag rests against a base member of the cart such that a bag mounting platform is formed that serves as a base upon which a base of the bag is permanently attached. Note in Figure 2 that the bag remains permanently attached even when the carrier is collapsed.

Also, identifying the carrier as being used for athletic purposes does not distinguish the invention over the prior art. It is well settled that claims directed to apparatus must be distinguished from the prior art in terms of structure rather than function. *In re Danley*, 120 USPQ 528, 531 (CCPA 1959). “[A]pparatus claims cover what a device *is*, not what it *does*.” *Hewlett-Packard Co. v. Bausch & Lomb Inc.*, 15 USPQ2d 1525, 1528 (Fed. Cir. 1990). (emphasis in original). Moreover, a claim containing a “recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus” if the prior art apparatus teaches all of the structural limitations of the claim *Ex parte Masham*, 2 USPQ2d 1647 (Bd. Pat. App. & Inter. 1987). Here, Server Perez teaches all of the structural limitations claimed and is capable of being used for athletic purposes.

Claims 1 and 6 are rejected under 35 U.S.C. 102(b) as being anticipated by Brown US 1,751,902.

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Brown discloses a wheeled, portable, collapsible equipment carrier comprising a two wheeled cart and a bag incorporating the cart. See Figures 1 and 2; lines 53-55; and note wheels 8 and bag 1. Also, the bag has a generally vertically elongated configuration having a top end opposite a bottom end and is fabricated of a weatherproof, flexible, heavy fabric. See Figure 2 and lines 43-46.

Claims 1 and 6 are rejected under 35 U.S.C. 102(b) as being anticipated by Allen US 5,845,780.

Allen discloses a wheeled, portable, collapsible athletic equipment carrier 10 comprising a two wheeled cart (note the handle and wheel arrangement depicted in figures 1 and 3) and an athletic bag incorporating the cart. See figures 1-3. The bag has a generally vertically elongated configuration fabricated of a fabric that is heavy, flexible, and weatherproof. See column 2, lines 48-49.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Server Perez US 4,989,889 in view of Weldon US 6,386,557.

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Server Perez does not disclose a support stand having an elongated, hollow, cylindrical U-shaped configuration affixed to lower external circumferential sidewalls of the base member. However, Weldon teaches the old and well known cart frame configuration having a main frame 10 with an anterior end opposite a posterior end, a hollow and tubular base member 16 forming a U-shape, and a support stand 17 with an elongated, hollow, cylindrical U-shaped configuration affixed to lower circumferential sidewalls of the U-shaped portion of the base member at corners. See Figures 1-3. From the teachings of Weldon, forming the frame of Server Perez with a support stand that is elongated, hollow, cylindrical, U-shaped, and is affixed to lower circumferential sidewalls of the U-shaped portion of a hollow and tubular base member would have been obvious to one of ordinary skill in the art at the time the invention was made. This would provide a sturdy base of support for the bag.

Claims 2, 3, and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brown US 1,751,902 in view of Weldon US 6,386,557.

The cart of Brown further includes a main frame 3, 6, and 14 with an anterior end opposite a posterior end, a base member 3 forming a U-shape that serves as a base upon which the bag can be supported, and a support stand 4 having an elongated configuration affixed to lower circumferential sidewalls of the U-shaped portion of the base member at corners. The cart also includes an elongated handle 15.

Brown does not disclose that the base member is hollow and tubular, that the support stand is hollow, cylindrical, and U-shaped, that the handle is hollow, tubular,

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and U-shaped, and that the handle is pivotally mounted to inside circumferential sidewalls of the main frame at the anterior end.

However, Weldon teaches that the practice of forming the base member 16 of a cart as hollow and tubular, forming the support stand 17 of a cart as hollow, cylindrical, and U-shaped, and forming the handle 30 of a cart as hollow, tubular, and U-shaped was old and well known in the art at the time the invention was made. See Figures 1-3. Weldon also teaches that pivotally mounting the handle 30 to inside circumferential sidewalls of a main frame 12 at the anterior end was old and well known in the art at the time the invention was made. See Figure 3. From the teachings of Weldon, forming the base member of Brown as hollow and tubular, forming the support stand of Brown as hollow, cylindrical, and U-shaped, and forming the handle of Brown as hollow, tubular, and U-shaped would have been obvious to one of ordinary skill in the art at the time the invention was made. This would provide the frame, support stand, and handle with a light yet sturdy structure that is relatively simple to manufacture. Also from the teachings of Weldon, pivotally mounting the handle of Brown to inside circumferential sidewalls of the main frame at the anterior end would have been obvious to one of ordinary skill in the art at the time the invention was made. This would allow the height of the cart to be reduced for storage purposes.

Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Server Perez US 4,989,889 in view of Green US 5,951,075.

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Server Perez does not disclose an inflating pump attached to the equipment carrier. However Green teaches that inflating pumps are old and well known pieces of equipment that are commonly carried with equipment carriers. See column 6, lines 24-26. From the teaching of Green, attaching a pump to the carrier of Server Perez would have been obvious to one of ordinary skill in the art at the time the invention was made in order to service other equipment attached to or carried by the carrier.

Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Allen US 5,845,780 in view of Green US 5,951,075.

Allen does not disclose an inflating pump attached to the equipment carrier. However Green teaches that inflating pumps are old and well known pieces of equipment that are commonly carried with equipment carriers. See column 6, lines 24-26. From the teaching of Green, attaching a pump to the carrier of Allen would have been obvious to one of ordinary skill in the art at the time the invention was made in order to service other equipment attached to or carried by the carrier.

Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Brown US 1,751,902 in view of Weldon US 6,386,557 as applied to claim 1 above, and further in view of Green US 5,951,075.

Brown does not disclose an inflating pump attached to the equipment carrier. However Green teaches that inflating pumps are old and well known pieces of equipment that are commonly carried with equipment carriers. See column 6, lines 24-

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26. From the teaching of Green, attaching a pump to the carrier of Brown would have been obvious to one of ordinary skill in the art at the time the invention was made in order to service other equipment attached to or carried by the carrier.

Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Server Perez US 4,989,889 in view of Inge US 6,494,468.

Server Perez also does not disclose ball-receiving cylinders attached to the front side of the bag. However, Inge teaches that the practice of attaching a ball-receiving cylinder 12 to the front side of a carrier was old and well known in the art at the time the invention was made. Also, the dimensions of the cylinder are suitable for accommodating softballs and/or baseballs 13. See Figure 1 and column 3, lines 24-29. Providing the bag of Server Perez with a ball-receiving cylinder would have been obvious to one of ordinary skill in the art at the time the invention was made in order to hold balls that are used with the athletic equipment in the bag.

Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Allen US 5,845,780 in view of Inge US 6,494,468.

Allan also does not disclose ball-receiving cylinders attached to the front side of the bag. However, Inge teaches that the practice of attaching a ball-receiving cylinder 12 to the front side of a carrier was old and well known in the art at the time the invention was made. Also, the dimensions of the cylinder are suitable for accommodating softballs and/or baseballs 13. See Figure 1 and column 3, lines 24-29.

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Providing the bag of Allan with a ball-receiving cylinder would have been obvious to one of ordinary skill in the art at the time the invention was made in order to hold balls that are used with the athletic equipment in the bag.

Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Brown US 1,751,902 in view of Weldon US 6,386,557 as applied to claim 1 above, and further in view of Inge US 6,494,468.

Brown also does not disclose ball-receiving cylinders attached to the front side of the bag. However, Inge teaches that the practice of attaching a ball-receiving cylinder 12 to the front side of a carrier was old and well known in the art at the time the invention was made. Also, the dimensions of the cylinder are suitable for accommodating softballs and/or baseballs 13. See Figure 1 and column 3, lines 24-29. Providing the bag of Brown with a ball-receiving cylinder would have been obvious to one of ordinary skill in the art at the time the invention was made in order to hold balls that are used with the athletic equipment in the bag.

Response to Arguments

Applicant's arguments filed in the appeal brief have been fully considered but they are not persuasive.

In regard to Allen, each and every element set forth in claims 1 and 6 are found, either expressly or inherently described, in Allen. These elements are identified in the rejection above. There is no requirement that a reference specifically claim each and

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every element set forth in the present claims, as Applicant suggests. Therefore, the present claims are anticipated by Allen.

In regard to Green, the disclosed apparatus may carry a range of balls including basketballs and baseballs. See column 3, lines 36-41. Green particularly envisions a pump attached to the apparatus. See column 6, lines 24-26. This teaching directly relates to the limitations of claim 4, and when combined with the additional teachings of the prior art as outlined above, obviates the invention defined in claim 4. Other features of the present invention that are not defined in claim 4 are irrelevant to the cited combinations involving Green.

The further arguments presented in the appeal brief are moot in light of the new terms of rejection outlined above. Furthermore, each combination cited in support of a rejection under 35 USC 103(a) includes an explanation of the teachings found in the references and the motivation for the combination. The references cited in each combination together teach every element defined in the claims rejected by each respective combination.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Anderson, Bullock, Haug, Stelniceanu, Bonewicz, Jr. et al., Vanderslice et al., DeCoster, Austin, and Smeallie disclose equipment carriers. Brown, Sr. and Ryan, Jr. disclose ball receiving containers configured to accommodate baseballs or softballs. Hu discloses a pivotally mounted handle on a cart.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher Bottorff whose telephone number is (703) 308-2183. The examiner can normally be reached on Mon.-Fri. 7:30 a.m. - 4:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brian Johnson can be reached on (703) 308-0885. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 305-7687 for regular communications and (703) 305-7687 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1113.



Christopher Bottorff
June 12, 2003



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